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THE TRANS-MISSOURI FREIGHT ASSOCIATION CASE

—AND—

RAILWAY POOLING IN THE U. S.

BY
ALBERT D. COOKE,

With an introduction by
HON. WM. E. CHANDLER.

Wm E Chandler's
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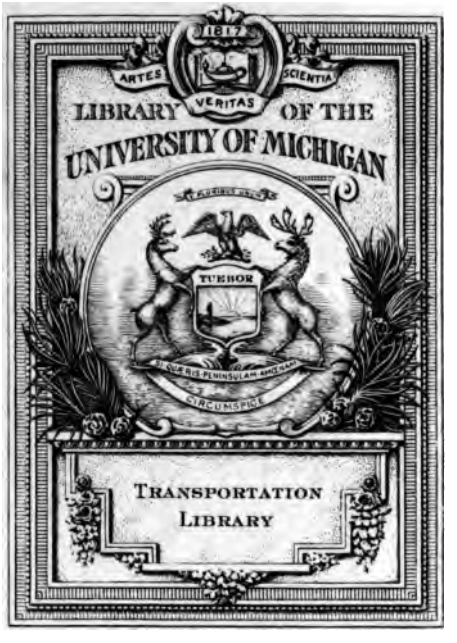
1898



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The Trans-Missouri Freight Association Case

—AND—

Railway Pooling in the U. S.

TRANSPORTATION LIBRARY

By

ALBERT D. COOKE.

With an introduction by

HON. WM. E. CHANDLER.

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1897.

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PREFACE.

In submitting this brief review of a subject of vital importance to the whole country I have earnestly sought to appeal to the reason and judgment of the reader rather than arouse the passions. It is apparent that the opinions expressed will have only such influence as comes from their being in accord with truth, and the known facts of the subject matter—and as the course of action urged shall commend itself to the apprehension of what is right and just on the part of those who may read what follows.

My heartfelt thanks are due to Senator Chandler for the kindness shown a stranger in writing an introduction.

With the hope that the thoughts I thus offer for your consideration may awaken greater interest in the question of public policy discussed herein, and conduce to the general welfare, I am,

Respectfully yours,

THE AUTHOR.

Introduction.

In response to a request to write an introduction to Mr. Cooke's discussion of the question of Railroad Pooling, I find nothing more appropriate than the point made on June 3, 1897, by Senators Chilton, Tillman and myself, in a signed paper presented to the Senate Committee on Interstate Commerce (See Appendix), as a reason against attempting to crowd through the Senate at the extra session a bill legalizing pooling.

The point is that competition in trade should not be abolished by a national law in behalf of the ten billions of capital engaged in railroad transportation, while the owners of the other property of the country, amounting to sixty billions, should be forced to efforts to obtain an income from their property against free and unrelenting competition.

The census statistics of the wealth of the United States are fairly reliable. It was sixty-five billions in 1890, including railroad property, valued at eight billions, although its nominal capitalization is about eleven billions. For the pur-

poses of my point I assume that the total wealth of the country is now seventy billions, of which ten billions is invested in the railroads, whose managers are striving to earn eleven hundred millions of dollars annually to pay their expenses and in addition, say 500 millions, as a five per cent. income on their nominal capital.

But the owners of the sixty billions of other property are striving with equal zeal to earn the net amount of three billions of dollars necessary to give them 5 per cent. on their investment.

Can any man give a sensible and just reason why these owners should hustle for three billions of dollars (and all the additional amounts necessary as the cost of reaching that net income) subject all the time to the fierce and ever present competitions of modern commerce; while the railroad owners should be relieved by an express law of Congress from all competition whatever, and virtually allowed to exercise the inexorable taxing power of the Government to raise, first, eleven hundred millions cost of operation, and in addition five hundred millions for income on their investments, this last sum being equal to the whole annual amount exacted by the United States Government by taxation?

No affirmative answer has been given or can be given to this question which does not result in one of two other additional and inevitable con-

clusions. Either (1) the like privilege of exemption from competition must be given to all other great industries besides the railroads, or (2) there must be government ownership of the railroads in order properly to protect the people from exorbitant charges.

To illustrate the first condition I introduced in the Senate on April 5, 1897, a bill framed in the exact language of the railroad pooling bill, but applied to "abolishing competition in trade and production and authorizing combinations to enable merchants, manufacturers and producers of commodities subject to interstate commerce to maintain prices and make profits notwithstanding business depression" (Senate bill 1566, 56th Congress, 1st session). I shall be very glad to learn any excuse any legislator can give for voting for the railroad pooling bill and voting against the bill 1566 as an amendment thereto.

The only reply to the opinion that with pooling must come Government ownership will be that the Interstate Commerce Commission can supervise rates and protect the public. My rejoinder is that the Commission cannot be relied on to do this. The railroads will control the appointments and dominate the Commissioners; and have always successfully opposed all attempts to enlarge the powers of the Commission. On December 14, 1892, Mr. Depew said to the Senate Committee (Senate

Mis. Doc. No. 126, 53d Congress, 2d session): "I appeared here for 20 years before committees of Congress under a retainer whose instructions were to fight the supervision of the railways of the country by public authorities. My own judgment was the other way, but I obeyed my retainer."

Mr Depew, who is a statesman, during 20 years kept his own judgment on a great public question carefully secret in his own breast. The new-born zeal of the railroad managers in favor of the Interstate Commerce Commission and an enlargement of its powers may be regarded with justifiable distrust. The wolf intends to devour the lamb.

Mr. Cooke's expressions in his discussion are entirely his own, and I do not concur in all of them, but I do most assuredly in the spirit of his treatment of the subject.

November, 1897. W. E. CHANDLER.

THE TRANS-MISSOURI FREIGHT ASSOCIATION CASE

AND

RAILWAY POOLING IN THE U. S.

The recent decision of the United States Supreme Court in the Trans-Missouri Traffic Association case, establishing the validity of the Federal Anti-Trust law of 1890, and declaring its applicability to railroads, seems thus far to have called forth mainly adverse criticism. So loud and deep have been the objections of those who fear that their self interests are likely to suffer if the legal principles set forth in this decision are not overthrown or circumvented by fresh legislation for their benefit, that the casual observer might be led to think there was but one side to this question. Like most other questions I hope to show that this one has two sides.

For convenience, and as an aid to clearness, I will make this division of the subject—those who "pay the freight," and those who receive it. On the one side are arrayed all those who own, manage or work upon or for railroads, together with all those who are now receiving, or who expect in the future to receive, special favors from transportation companies, in the form either of passes for themselves, their families and friends or of spe-

cial freight rates which the general public do not and cannot obtain. How numerous the latter class are all can judge. How many weak and purchasable newspapers, claiming to be exponents of public opinion, how many venal legislators, municipal, State and national, how many boss politicians, with their swarms of adherents; how many thrifty—not to say corrupt—Judges, who carry the "compliments of the road" in their pockets in the shape of annual passes, let the man of average intelligence, with ordinary knowledge of what is going on in the world, determine.

Opposed to these are those who use the railroads as they use the stores—for the purchase of what they require, with no thought of any especial favor, expecting to pay without question what is asked for transportation for their persons or property.

Which of these parties most needs the protection which wise, honest and impartial law, intended to curb and restrain the power for extortion over the latter, which the control of vast wealth in the form of all available avenues of transportation gives the former? Judge Peckham, in delivering the opinion of the Court, evidently was not in doubt on this point—"Nor is it for the substantial interest of the country that any one commodity should be within the sole power, and subject to the sole will of any one powerful combination of capital. Congress has, so far as its jurisdiction extends, prohibited all combinations in the form of trusts, entered into for the purpose

of restraining trade and commerce. The results naturally following from a contract or combination in restraint of trade or commerce, when entered into by a manufacturing or trading company such as above stated, while differing somewhat from those which may follow a contract to keep up transportation rates by railroads, are nevertheless of the same nature and kind, and the contracts themselves do not so far differ in their nature that they may not all be treated alike and be condemned in common."

It is clear that this learned jurist does not believe trading trusts or railroad pools are essential to the welfare of the body politic, or that either now require fresh legal enlargement of privileges, but rather, as an upright Judge, that existing laws for their restraint and control should be honestly administered. Had the antecedents of those Judges who dissented from the opinion of the Court been different it is not unlikely there would have been greater unanimity in respect to the questions involved.

It is the custom of those who greatly deplore the decision referred to, and who now vehemently urge the necessity for Congress promptly passing the pending pooling bill, to present the immense figures which represent the stock and bonds of the 181,000 miles of railroads in the United States as conclusive reasons why this interest should be singled out for the bestowment of a very great, unusual and, as I shall attempt to prove, a very dangerous power, not conferred upon any other

interest in this country. Is the magnitude of this interest (in round numbers, five thousand millions of stocks, and six thousand millions of bonds) a good reason for granting a power which may be used oppressively? Nay, is it not rather an imperative reason why such a grant should be refused?

A great many newspapers, whose relations to this subject are known, and railroad men in general, led by the brilliant and genial Dr. Chauncey M. Depew, are now predicting many dire evils if this particular decision is sustained as supreme law. Their earnest protestations of great interest in the country's welfare at once suggest to the thoughtful that possibly all this anxiety for the public welfare is not purely disinterested. The arguments brought forward by them in support of their contention that, in order that the railroads of this country may maintain themselves, they must have legal authority for forming one or more gigantic trusts or pools, with full power to make uniform rates for every pound of freight and every passenger in the entire country, gives convincing evidence that such is the fact.

With regard to this peerless champion of the railway interests, Doctor Depew, none will dispute that his great ability as a lawyer, his many years of eminent and faithful service in railway interests, in connection with his being the present head of the greatest railway combination in the world, fairly entitle all he may say to the highest consideration, and also raises a strong presumption that what he says against the decision mentioned

and in favor of railway pooling, is the very best that can be said upon the side of the railroads. It is well, therefore, to examine with care the arguments this pre-eminent advocate advances to sustain his position.

He has given his views at length in a telegram, over his own signature, to a Philadelphia newspaper. This communication starts with the assertion that "the Joint Traffic Association is now acting under the law," because two inferior Courts have decided that their agreement is lawful. Notwithstanding this cool assurance, what follows seems to imply a doubt upon this point, as we are next informed that he has wired their counsel to apply to the Attorney General to move in the United States Supreme Court to have their case, involving the very question of the legality of the agreement mentioned, advanced so as to be heard as soon as possible. Thus it would seem that if the Supreme Court overrules the lower Courts, as it has already done in the Trans-Missouri case, it will then appear that the Joint Traffic Association is also an unlawful combination and conspiracy.

Doctor Depew informs us that England, France, Germany and Belgium have been wrestling with the transportation problem for forty years, and all "have found there is but one way to solve it, and that is by certain measures of government regulation." Are those of our people who have experienced the benefits of "certain measures of Government regulation" by actual and ex-

tended travel and observation of European railways, prepared to assert that such "regulation" is best for us? Nay, more; are the freemen of the United States willing to agree that such systems of control as prevail in countries which maintain more autocratic forms of government are the blessed and only ones under which the railroad business of our country can be safely conducted, especially in view of the fact that for more than half a century we have managed to subsist without such control? He declares that a railroad bureau, a Board of Trade, as in England, or an Interstate Commerce Commission is indispensable to properly control conflicting railroad interests. And yet it cannot be denied that the railroads themselves have done all in their power to strip our own Interstate Commerce Commission of all semblance of authority, that every attempt to regulate or control the power of the railroads or to reduce unjust and excessive freight rates has been resisted to the utmost. In view of this indisputable fact, to which the records of the Federal Courts bear conclusive evidence, is it not the height of irony for this champion of the railroads to assert that the Joint Traffic Association and its predecessors were formed for the purpose of carrying into effect the Interstate Commerce law?

Evidently the off-hand opinion ("that is a conspiracy under the Anti-Trust law, as decided by the Supreme Court") of one of the Government attorneys, as to the legal effect of a conference be-

tween the Doctor and Mr. Thomson, of the Pennsylvania Railroad, in relation to railroad rates, if followed by action, is not taken seriously, as appears by the assertion of the legality of the continued existence of the Joint Traffic Association, and hence loses its force as an argument against the decision of the Court, because if the Doctor really believed that meeting Mr. Thomson for such a purpose would make him a conspirator the meetings would certainly be discontinued.

The Doctor's illustrations and arguments in relation to the bad effect of permitting each road to make its own rates do not seem conclusive, because he overlooks the fact that to a very large extent, as he knows, they have done so since the formation of the various railroad combinations began, twenty years ago, if indeed there is not even now independent rate making among the members of his own association.

Dr. Depew has an established reputation as a humorist, but of all his jokes that contained in the statement, "Now, there has never been any complaint by shippers against the rates in the Joint Traffic Association since it was formed," is the greatest. The Doctor has not had time to visit the rate rooms often or tarry long when there, or he might have heard some unreasonable fellow complaining of the quotation made him. In ante-bellum times the African slave in the South never complained that his wages were inadequate.

I cannot agree with the statement that the only ones opposing the formation of railroad pools

are the Populist and the manager of trusts. If this question is ever voted on it will appear that vast numbers who do not belong to either class are active opponents. Just now the most effective ones are upon the Supreme bench at Washington.

A fair epitome of the Doctor's argument is that railroads must be permitted to form pools, or the property rights of the owners of railroads will suffer great loss, because those in responsible control will in their eagerness to get business make to powerful shippers unremunerative rates; and that the general business interests of the country will suffer because of rate wars and consequent railroad bankruptcy. If this were all true would it constitute a valid reason why the Government of the United States should grant the right to all railroads engaged in interstate commerce to consolidate to the extent of making and maintaining uniform rates? If the answer is yes, then the only reasonable grounds on which the same right to consolidate can be refused to any and every other kind of business in this country that passes beyond the bounds of a single State, are these: The capital involved is too small to justify such a grant of power, or the capital invested in railroads is for some reason more sacred than ordinary money, and and hence deserving of special Government protection. I cannot believe that either of these reasons will be deemed good and sufficient by the people of the United States. We are told that the only remedy known to the Doctor for the impend-

ing evils is "some form of agreement * * * to be made under the supervision and only with the approval of the Interstate Commerce Commission. That agreement should be subject to amendment or to abolition by the Interstate Commerce Commission, the rates fixed under that agreement to be subject to supervision and change by the Interstate Commerce Commission."

Now, all this sounds very fair and very fine, but I respectfully submit that if the vast power of fixing the price of every movement of freight or passengers between the States is to be left to a body like the Interstate Commerce Commission because if not done the capital invested in railroads will be insecure and in danger of being lost, we ought, in all fairness, to have another commission to fix the price of agricultural products—wheat, cotton, corn, barley, etc.—all of which are the subjects not only of interstate, but international commerce also. Besides, this interest is far greater, both in the amount of capital invested and the number engaged in it as a means of livelihood. Again, the losses of those who follow the business, and the number of widows and orphans whose sole dependence it is (the class which always enlists the tender solicitude of railway managers when the interests of railways are in danger of curtailment), far exceed that of those connected with railroads. If the railroad man must be protected in this way why not the farmer and trader also? The farmer will only ask for fair living prices for his products. The country

at large is more deeply interested in his prosperity than in that of the railroads. If the farmer has learned how to hide his losses by "peculiar" bookkeeping, or, when overwhelmed with several years of successive failure of nature to yield him expected crops, to "reorganize" in such a way as to put the largest share of his burden upon his customers, as is often done by the railroads, a knowledge of the fact has not yet reached the public. Surely if any interest in this broad land is deserving of Governmental protection it is the agricultural one.

Assume, for argument's sake only, that railroad property in this country is in danger from the causes which the advocates of railroad pooling adduce. A practical question for those whose only interest in railroads arises from their legitimate use, who constitute the great majority, is: Has not this interest received its full share of Government favor in these items—the right of eminent domain, together with that of using vast sums in the building and operation of railroads, free from individual liability? A wholly safe estimate of the capital of railroads is from one million to two hundred million dollars each. Are not such sums, in competent hands, adequate for self protection as against both large and small traders and farmers? Such a question answers itself. It is an insult to the intelligence and reason of the American people to assert that the whole eleven hundred millions of nominal railroad capital in the United

States must be practically thrown into the scale to act as a unit against every other interest that dares offer remonstrance or opposition, in making such rates for transportation as it chooses to exact. And this great wrong is to be perpetrated upon the specious plea that it is necessary to protect itself.

But if this principle of the Government acting the part of an underwriter, against loss in business, by fixing uniformly remunerative prices, is a benign one then there should be no stop in the good work until every adventure of trade and commerce is brought under the protecting wing of the Government in the sense of abolishing liability to loss.

What barrier is proposed to be erected for the protection of the people against a possible misuse or abuse of the great power which the uniting of such an imperious capital will create. Consider for a moment what the banding together of all railroads means. There are now three or four trunk lines handling the business between New York and Chicago, any one of which, in a year when political parties were nearly evenly divided, could send voters enough to the polls to change the natural result in from four to six of the largest States. This being the power of a single railway system what force could not the railroad oligarchy exert, when they shall in effect become one? Have not the observant become aware of the pernicious methods by which railroads have carried legislation in various States, for the suppression

of competition and their own aggrandizement. If a people can learn from past experience surely we ought to set our faces sternly against any further enlargement of railroad influence.

Against all this compact, thoroughly-organized mass of railroad interests it is proposed to place the will of five men, appointed by the President with the advice and consent of the Senate, constituting the Interstate Commerce Commission. Is this sufficient protection? Unhesitatingly, no; it is rather a cunningly devised scheme to give the force of law and the backing of the United States Government to every edict which this combined capital shall put forth in the way of higher rates. There are changes needed in the laws which govern transportation companies in our country, but they are not in the way of increasing their privileges, but rather of their curtailment.

To say nothing of secret bribery, where money is the medium employed, a practically open system of bribery of Judges, legislators, executive officers and editors has grown up and extended until it has become a stench in the nostrils of the whole people. I mean the distribution of free trip and annual passes among all these classes and all others whom it is thought have any influence which can be used for the benefit of railways. It should be made a crime, punishable by fine and imprisonment for both the giver and the receiver of a free railroad pass. If public officials traveling on official business were to receive free passes,

not as a matter of favor or gift from the transportation companies, but in consequence of a law requiring them to issue such passes, the degrading and corrupting influence flowing from this source would be greatly lessened, if not wholly eliminated.

Some States, to their honor be it said, have put this form of bribery under a legal ban, at least so far as relates to Judges of Courts. It seems incredible that any man fit to wear judicial ermine should require a special law to prevent his acceptance of free railway passes. Let us analyze this act. An annual pass over any one of the trunk lines has a commercial value of from, say, fifty to three hundred dollars, contingent upon the recipient's ability to use it much or little. This fact would quickly develop by an auction sale of railroad passes. Now, suppose the Judge upon the bench, with this kind of a "compliment of the road" in his pocket, tries case after case in which the railroad company which gave him the "compliment is a party litigant. And yet everybody knows this is the situation in hundreds, if not thousands of cases, and no squeamishness is shown on the part of the Judge. But suppose John Jones, butcher, has a case pending, and desiring to make himself solid sends his "compliments" to "his Honor" with a $50 bill attached. How quickly the machinery of the law would be put in motion for the punishment of the vile wretch who would thus attempt the crime of bribery. The very Judge who is prompt to see

the grave crime of the latter can perceive nothing wrong with the former, retains his passes and uses them freely. If anyone can define the difference in the moral quality of the two givers of "compliments" I should obtain light not now apparent.

An apt illustration of the deadening effect of this pernicious practice upon the conscience and moral discernment between right and wrong in official life is found in an interview with Governor Russell, of North Carolina, published in the "Railway Age" as follows:

"Being charged with riding on free passes, which a State law prohibits the railways from issuing, Governor Russell, of North Carolina, makes this frank statement:

" 'Yes, it is true that I have been riding on free passes. After my election as Governor all the railroads in the State and many of them out of it sent me passes. I declared that I would not take passes from any of them. In two months' time I yielded to their pressure and not only took their passes, but took a train of cars, of the best finish and elegance, furnished free to bring up a party of invited friends to my inauguration. They urged that I should accept what they called their 'courtesies.' * * * Indeed, they put me where to refuse passes would seem discourteous, if not insulting to them. So I took them and have got a pocketful of them now. * * * But I have concluded that just as long as they send around their passes to officials and favorites I will take them when they offer them. * * * In ac-

cepting deadheads I am not violating the law—neither are Judge Simonton and the rest of them. The law prohibits the railroads from giving the pass—not the donee from accepting. Whether one should accept such a gift is a question of ethics, which seems to have been determined by custom in favor of every man's taking whatever is offered.'

"While it is a 'question of ethics' whether or not, by accepting passes he will help the railroads to violate a State law, the Governor resolutely declares 'I shall do all I can to get the law executed and put an end to free passes,' and furthermore, 'if they continue to defy the law by issuing passes next year I will do all that I can to put the extreme penalty on them.' The Governor apparently had no intention of being jocular; yet somehow there seems to be humor in the situation."

How will the average man look upon the act of such an executive in attaching his signature to to some bill favorable to railroads which has been carried through the Legislature of North Carolina by the votes of Legislators who are well supplied with free passes and hold the same free and easy views as to their use as the Governor expresses with the utmost frankness. May they not think that "the train of cars, of the best finish and elegance, furnished free to bring up his friends to his inauguration," together "with his pocketful of passes" have some effect in shaping his official action, and how will suitors before Judge Simonton's Court, if his decisions are favorable to rail-

roads, look upon the subject of free passes, which, the Governor assures us, he (the Judge) is also supplied with?

The most censurable utterance of Doctor Depew in the communication mentioned is the closing one, because it might be expected from a demagogue—"The ultimate effect of the decision, carried out according to Judge Peckham's interpretation, makes all labor organizations criminal organizations in restraint of trade." "Undoubtedly the combinations of banks under the decision through the Clearing House is a criminal organization," etc. For the comfort and consolation of both labor organizations, including the Brotherhood of Locomotive Engineers and Clearing Houses, it may be stated parenthetically that the voluntary opinion of a lawyer, however eminent, given in the heat of disappointment, that an organization of which the author is the head is likely to be declared unlawful, does not have the force of law, in this country at least, until such opinion is confirmed by a Court of competent jurisdiction.

The less discreet advocates of railroad pooling assured us that the immediate effect of this decision would be to inaugurate the most frightful and sanguinary "rate war" this country has ever known, and yet one day continues to succeed another, our planet still revolves, "war's stern visage" has not yet appeared, this crimson flood is still delayed—even the railroads continue to run freight and passenger trains, and the more favored still earn dividends.

Stripped of the sophistries by which those who urge that the country ought to grant exceptional power to transportation companies to prevent the working of the natural law of supply and demand, which, except in case of conspiracy in restraint of trade, has free play under the law in every other business, what is left? That in some mysterious manner which is not explained, those who manage railroads, except they are given power to oppress the people of this country at will, through uniformly excessive charges, will become so demented as to proceed at once to destroy the value of the property confided to their care. Is this estimate of the business ability of railroad men correct? Would they themselves sanction it? How does it comport with our experience in dealing with them? Does not every sane man know that as a class they are fully equal, if not superior, to any other in this country? How untruthful and absurd to urge that the interests they represent need special legal protection lest they, by their voluntary action shall endanger them.

I have spoken of the enormous figures which represent the capital supposed to be invested in the railroads of this country. Who can tell how many of these figures represent money honestly spent in the construction and equipment of these roads, and how many represent mismanagement, dishonesty, extravagance, smart financiering, such as occurred in the earlier history of the Erie, and when the consolidation of the New York Central with the Hudson River Railway took place (Our

mutual friend, the Doctor, could doubtless tell how much, if anything, was paid for the $44,428,-330 "consolidation certificates" issued to the holders of the stock by this company at that time), or the many recent reorganizations that pay the reorganizers huge profits? From all we know of such matters, is it unreasonable to assume that of the entire nominal capitalization of railroads not over 50 per cent. represents money actually invested? It is clearly apparent that the chief object, if not the sole one, of all railroad combinations is not, as is asserted, to prevent the managers from destroying the property in their care by means of rate wars, or selling transportation for less than cost, but to lay a sufficient tax upon all users of railroads to make them earn good dividends for their owners, however fraudulent their capital accounts may be.

The Joint Traffic Association, having been endangered by the late decision, a fresh clamor is immediately started for a law authorizing pooling. If such a law is enacted the railroad men will accomplish their purpose, but it will prove a curse to the people of this country and ought itself to condemn also the political party that is responsible for its enactment.

It is not uncommon for the champions of the railroad interests to parade the fact that many railroads do not pay, in such a way as to clearly imply that in some way the patrons of these roads are to blame, or at least that they ought to be willing to be taxed sufficiently high rates to make

such roads remunerative. From this view of railroads, or other transportation companies, I wish most earnestly to dissent. There is no especial sacredness attaching to money invested in the transportation business. The American people have entered into no contract, guaranteeing that money so invested shall not be lost, and parties who invest in this line ought to expect their capital would be subject to the same risks that pertain to other business. The public ought never to be asked to pay enough to make returns upon fictitious capital, or provide for blunders, carelessness or worse of railroad managers. On the other hand, I claim for the large majority of those who use railroads a willingness to pay a fair living return for capital thus invested.

A severely practical question for the actual owners of railroads at this juncture is how far it is wise and prudent to press upon the American people the burdens which their superb organization, with its ramifications in every city council, in every State Legislature, in the Congress of the United States, and with plenty of warm friends upon the bench of our Courts (placed there by railroad influence), gives them power to do? Might not railroad men profitably remember that there is such a thing as "a last straw," which when added to the load breaks the back? It may not be inopportune to recall some facts in connection with railroads by way of illustrating their managers' methods of action, and estimate of what is just and reasonable in the way of charges, that

those who are called upon to "pay the freight" may judge whether they agree upon the point of what is reasonable. Take the case of the Central Pacific manager, who, when called as a witness before a committee of Congress, was asked to explain how it was that freight rates to intermediate points were so much higher than the through rate to San Francisco, complied by stating that the method by which the higher rate was made for the shorter haul was to first charge the through rate to San Francisco and then add the local rate back from there to the point of shipment, thus more than doubling the through rate. Would the average trader—let us say at Winnemucca, Nev.—when presented with a bill of this kind and with full knowledge of the fact that this particular road was built with bonds guaranteed by the United States (few or none of which have been paid), and a further knowledge of the effect of the building of this road upon the individual fortunes of the builders, would such a party consider the rate reasonable? Take another instance of the same character, nearer home, and affecting vast numbers. The freight rates on anthracite coal range, according to size of coal, from $1.25 for Buckwheat size to $1.70 and upward for larger sizes from Mauch Chunk and Port Carbon to Tidewater. In the case of Cox Brothers & Co. against the Lehigh Valley Railroad Co., the United States Interstate Commerce Commission declared these rates unreasonable, but was subsequently overruled by the Courts upon a point of law.

Now what are the facts as to this rate? The Pennsylvania Railroad Company's annual report for 1895 shows the average actual cost of moving one ton of all miscellaneous freight one mile to be four and seven-tenths mills. This, under all the varying conditions under which all kinds of merchandise are handled, makes it reasonably sure that such cost is nearly or quite double what it is for handling Anthracite coal, which is mainly loaded in solid trains of 1200 to 2000 tons, and move on a descending grade, making it certain that there is no freight in the country that can be handled as cheaply, and yet we pay for this movement of about 90 miles, on an average, at least 1 1-2 cents per ton per mile, or a profit on the cost of, surely, 300 per cent., and yet we are told that railroads only want reasonable pay, and are losing money. The truth is the people of this country within a short time past have had a fresh tax of about one dollar per ton levied and collected for the benefit of the coal miners and carriers, which are mainly the same persons acting under different corporate names. This last exaction amounts to from forty-five to fifty million dollars per year. It should also be borne in mind, that this vast sum has been taken mainly from the poor and middle class, in a time of depression and scanty opportunities to earn money.

With this exhibition of the power of the combination of that section of the railroads, known in the street as the "coalers," a power which is not a theory merely, but a fact, brought home and

felt by every user of Anthracite coal, I ask if in your judgment, any enlargement of legal privileges is required by this interest to protect its property rights? I think the average man will conclude it is now fully able to take care of itself; that he will begin to wonder what fresh field of enterprise the financial genius will next enter, who is credited with the Herculean task of uniting the coalers, and who can also hold up impecunnious National Administrations and drive highly advantageous bond bargains with them. An anxious public, filled with admiration, not unmixed with fear that they shall in some new way become the subjects of this peculiar genius' unmerciful attention, await developments. The insincerity and sham of the railroad manner of accomplishing their purposes was aptly illustrated by the late Jay Gould, who, in explaining to a New York legislative committee his methods of carrying the Legislature for his purpose, coolly stated, in using the railroad influence in favor of candidates there were no political preferences, as such; that is, in localities where the Republicans were most numerous they were strong Republicans, and where the Democrats were most likely to win they were staunch Democrats. Thus it is now an organized effort is being made to accomplish a certain end by deceit and treachery, using all the blandishments of gifted lawyers, all the powers of a subsidized press, all the influence to be gained by a liberal distribution of passes, assisted by all the agencies that organized wealth knows so well how

to employ for its own purposes. Opposed to this solid phalanx are the great, long-suffering, patient, dumb American public, with no Doctor Depew in their ranks and no eloquent voices raised in their behalf. Under these circumstances if the railroads deem it safe to press their advantage the issue will not be doubtful.

If political expediency may be consulted how is it with the politicians that belong to the party in temporary ascendancy? Is it safe for them upon the silly and untruthful pretexts urged in favor of railroad pooling, to go on and vote it through? It would seem that this of all others is a highly inopportune time to make further drafts upon the patience of the people. With Governor Tanner, of Illinois, signing a bill over the protest of the leading reform organization of the city of Chicago, by which it is stated a combination of street railways has been enriched to the extent of five million dollars, with untold wealth to be gained in the fifty years which they are by this law enabled to prey upon the people of Chicago; with the shameful record for incompetence, corruption and jobbery which the Legislature of Pennsylvania has made this year, with the trail of the Sugar Trust leading straight up to the door of the United States Senate, with no one yet able to tell how many wicked cooks who send unauthorized telegraphic orders for sugar stock are in the employ of its members—is it not, I ask in all seriousness, a time to go slow? May not another Oakes Ames appear as in the days of the Credit Mobilier, with

his little memorandum book, the mere production of which sent many brilliant statesmen to the rear? Is this a good time to take on more load? Would it not be far safer to throw off some that the "Grand Old Party" is now staggering under?

My criticism may lead the reader to suppose I am a hater of railroads and railroad men. Nothing could be farther from the truth. I like them both and yield to no man in admiration and gratitude for all that railroads have done to make life happier. But I cannot agree with the principle that a few men are entitled to monopolize all the advantages that have come through the application of steam and electricity to the wants of men. It is said with truth that railroad freight rates are much lower than formerly, and the idea is sought to be conveyed that therefore the people really have no ground for complaint. The truth is that no part of the reduction in freight rates has come as a result of generosity on the part of railroad managers. Their sole question in such matters being, not how much is a given service worth, but "what will the traffic bear;" in other words, how much can we get? The reductions have come about in consequence of the legitimate working of the law of business, which law it is now proposed to set aside, by enactment of Congress for the benefit of a "combination of corporations in so-called trusts (pools) to limit production, stifle competition and monopolize the necessities of life." It may be questioned whether freight rates have really been reduced relatively more than the re-

duction in cost of carriage, and in the item of Anthracite coal there has been no reduction for 20 years or more. Besides, in passenger fares there has been little or no reduction, notwithstanding everything else has cheapened greatly. Surely, nothing more is needed to keep up the passenger rates. A clear apprehension of the real condition of affairs in a country like ours and discernment of the probable outcome of railway pooling will deter the managers of this enormous interest from pressing its legal sanction, if the highest interests of railway investments are consulted.

As showing that others apprehend grave danger to the body politic from the combination of great wealth and the abuse of corporate power, I wish to quote from two eminent men upon this subject. Both having reached what we Americans are justly accustomed to regard as the highest plane of judicial honor—the bench of the Supreme Court of the United States—nothing can be said which will add weight to their utterances. The first one is taken from a judicial opinion delivered by Chief Justice Taney sixty years ago (found in 11th Peters, U. S. Supreme Court Reports, page 537), at a time when corporate power had attained little of the dangerous character that has since marked its development. The second is from an address delivered by Associate Justice Brown, of this Court, June 24, 1895, before the Yale Law School. If such men, who cannot be accused of being alarmists, see the danger from this source is it any wonder that people are awak-

ened to a sense of danger when the greatest and most thoroughly organized corporate interest in the country is demanding of Congress an enormous increase of power?

Judge Taney in delivering the opinion of the Court said: "But the object and end of all government is to promote the happiness and prosperity of the community by which it is established, and it can never be assumed that the Government intended to diminish its power of accomplishing the end for which it was created. * * * The continued existence of a government would be of no great value if by implications and presumptions it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform transferred to the hands of privileged corporations."

After repeating the statement of an English writer—that so-called free American citizens practiced abject submission to the soulless despotism of the omnipotent power of corporations, Judge Brown says: "Granting this to be overdrawn, for I am unwilling to believe that corporations are solely responsible for our municipal misgovernment, the fact remains that bribery and corruption are so general as to threaten the very structure of society. * * * So far as such influence is based upon superior intelligence and is exerted for the public good it is doubtless legitimate—so far as it is used to secure to wealth exceptional privileges, to trample upon the rights of the public, to stifle free discussion or to purchase public

opinion by a subsidy of the press, it invites measures of retaliation which can scarcely fail to be disastrous."

"* * * The grossest frauds are perpetrated in the construction of such roads, which are built not by the corporation owning them, for the best price that can be obtained, but by the directors themselves under guise of a construction company, another corporation, to which is turned over all the bonds, mortgages and other securities, regardless of the actual cost of the road. The road is equipped in the same way—by another corporation, formed of the directors, which buys the rolling stock and leases it to the road—so that when the inevitable foreclosure comes the stockholders are found to have been defrauded for the benefit of the mortgagees, and the mortgagees defrauded for the benefit of the directors. Indeed the process of reorganizing, or as it is popularly and often properly known, 'wrecking' corporations in the interest of the directors, has become an exceedingly profitable, if not a very reputable, industry. Property thus acquired in defiance of honesty and morality does not stand in a favorable position to invoke the aid of the law for its protection. * * *

"Worse than this, however, is the combination of corporations in so-called trusts, to limit production, stifle competition and monopolize the necessaries of life. The extent to which this has already been carried is alarming, the extent to which it may hereafter be carried is revolutionary.

Indeed the evils of aggregated wealth are nowhere seen in more odious form."

It is useless to dwell upon the dangers that beset our national life. Equally unwise is it to deny the existence of any danger. If that evil day shall ever come when a majority of our people believe the flag of our country has ceased to be the symbol of equality before the law, of liberty regulated by righteous statutes, affording equal opportunities within the scope of individual capability, to every citizen; in a word, what the Fathers intended it should signify; if instead of this our flag becomes the support of an odious trust, or rather of a combination of trusts, banded together with the purpose of forcing unjust and exorbitant tribute from the great middle classes, and under the guise of law to rob the poor to enrich those already affluent, then the end of the present government will not be far distant. It may sober our optimists to recall the fact that history furnishes no example of the lengthened continuance of a republic. If the same evil influences, inordinate wealth, indolence and profligacy, which brought about the downfall of Greece and Rome are allowed to run riot in our own land, why will they not bring the same results and thus history repeat itself?

When the love of our country and its flag has died in our hearts the end of existing institutions will soon follow. It is the part of wisdom in the face of danger to avoid the tactics of the ostrich—who seeks to hide its head, while its ungainly body

is exposed—and meet the perils of the time in a manly fashion. It is a time when the remnant whose love of country is greater than the love of money should make themselves heard in defense of the right and for the protection of the poor. Settle it now, that there is no class or business in this country sufficiently large and important to demand of our people the right to be made superior to the law, or to require of us the enactment of a special law, intended to give them advantages that are denied to all others.

My conclusions are that the decision of the Supreme Court in the case mentioned, so far from endangering any interest in this country, is a most salutary deliverance, in keeping with our past traditions, and a most wholesome restraint of corporate power, needed alike by the managers of transportation companies and for the protection of their patrons—that it ought to be upheld and its legal principles receive wide application in the conduct of trade and commerce; that the efforts now making, by the railroad men in Congress, to overthrow the beneficent principles contained in this interpretation of existing law by means of enacting a new law, directly authorizing railroad pooling, is an unworthy attempt to deceive the public, and ought to be condemned by every honest Congressman, as it surely will be, if the voters of this country are allowed to decide upon its merits.

Appendix.

At the meeting of the United States Senate Committee on Interstate Commerce, held on June 9, 1897, the following protest was presented by Senators Chandler, Tillman, and Chilton against the so-called pooling bills, which allow the railroads of the country to combine for the purpose of keeping up rates of fares and freights:

"The undersigned move that the various bills, allowing pooling and changing the powers of the Interstate Commerce Commission, be postponed until the next session of Congress. There are many reasons why this is the wisest and best present disposition of the subject, some of which are the following:

I.

It has been generally understood that only the tariff bill and other absolutely necessary bills are to be passed at the present special session. If so, there is no need of hastening to report to the Senate a bill of such vast importance as one authorizing by law of Congress a trust with a capitalization of eleven billions of dollars.

II.

Various investigations should be first made by the committee. Recent decisions of the Supreme Court have been made concerning the powers of the Interstate Commerce Commission. These should be examined by the committee, and the views of the commission ascertained as to the needs of new legislation strengthening the powers of the commission. This is the request of the railroad commissioners of the various States lately in session at St. Louis.

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III.

As the bill proposes to make it lawful for all the railroads of the country to enter into one immense trust, with a capital of $11,000,000,000, careful investigation should be made into the workings of the already existing Joint Traffic Association. That combination includes the nine different and competing systems of railroad extending from Chicago to the seaboard, embracing thirty-one of the greatest railroad companies and $2,500,000,000 of capital, which has been in operation for one and a half years in violation of law. The most exhaustive inquiry in this direction should be made by the committee, with power to send for persons and papers; and there should be the most thorough examination and exposure of the methods and results of the existing illegal trust before making it legal, extending it to cover all the railroads of the country, and committing to its operations the vast interests of the whole people to be affected by its transactions.

IV.

Especially should the vast special fund of the Joint Traffic Association be investigated. Each of the thirty-one railroad lines of the association paid into the hands of the nine managers—one representing each system—the sum of $5000, making a fund to begin with of $155,000, and has bound itself to make such additional monthly payments based upon gross earnings as the managers may call for; as well as large sums as fines if it lowers transportation rates. It should be ascertained for what purposes this great fund is maintained, and whether or not it is designed or used, or likely to be used, for improper purposes.

V.

It should be ascertained to what extent the railroads of the Association and other railroads of the country are violating section twenty-two of the Interstate Commerce law, by issuing free passes in order improperly to accomplish their purposes; it having been admitted before the committee on a former occasion, by the late president of the Pennsylvania rail-

road, that this law against free passes is habitually disobeyed by the railroad companies.

This will be a most fruitful field of inquiry, which it is of the highest importance to cover if there is to be fair and full knowledge of the scope and power of the great trust to be created by the proposed bill.

VI.

The probable effect of railroad pooling contracts upon the wages of labor should be carefully investigated and considered before this bill is reported favorably. Under such a contract every railroad line in the trust becomes interested in lowering the rate of wages of the employes of every line. An eleven thousand million company is to be authorized by Congress to make a contract in which may be fixed the wages of 900,000 workmen who are to be left to struggle helplessly against the concentrated wealth and enormous power of this great monopoly.

VII.

Before the committee acts further time should be given to the people of the country, all interested in low transportation, to make themselves heard upon the question whether all competition in railroad transportation should be abolished by act of Congress; especially as it has been everywhere supposed that there would be nothing more than tariff legislation at the present session. The various boards of trade and other commercial organiations interested in cheap transportation and opposed to abolishing by force of law all railroad competition should be invited to submit their views and allowed time to prepare them.

VIII.

If the owners of the combined railroads, organized as one great trust, are to be allowed to obtain from the public annually their cost of operation, being eleven hundred million dollars ($1,100,000,000), and in addition, five hundred and fifty million dollars ($550,000,000) interest and dividends, without encountering any competition whatever, it will be claimed that the